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CATHY A. CATTERSON, CLERK
U.S. COURT OF APPEALS

NOT FOR PUBLICATION
UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

MARGARITA GONZALEZ,

Plaintiff - Appellant,

v.

MICHAEL J. ASTRUE,** Commissioner
of Social Security Administration,

Defendant - Appellee.

No. 06-55183

D.C. No. CV-05-00691-MLH

MEMORANDUM*

Appeal from the United States District Court
for the Southern District of California
Marilyn L. Huff, District Judge, Presiding

Submitted October 17, 2007***
Pasadena, California

Before: PREGERSON, HAWKINS, and FISHER, Circuit Judges.

* This disposition is not appropriate for publication and is not precedent except as provided by Ninth Circuit Rule 36-3.

** Michael J. Astrue is substituted for his predecessor Jo Anne Barnhardt as Commissioner of the Social Security Administration. Fed. R. App. P. 43(c)(2).

*** The panel unanimously finds this case suitable for decision without oral argument. See Fed. R. App. P. 34(a)(2).

Margarita Gonzalez (“Gonzalez”) appeals the district court’s summary judgment grant affirming the decision of the Commissioner of Social Security (“Commissioner”) denying her application for Supplemental Security Income Disability Benefits under Title XVI of the Social Security Act. For the reasons that follow, we reverse the judgment of the district court.

Substantial evidence does not support the decision of the Administrative Law Judge (“ALJ”). The ALJ chose to disregard the opinion of Dr. Andre Jacobo, Gonzalez’s treating, examining physician and based that disregard on the opinion of Dr. Albert Lizarraras, a non-treating, non-examining physician who assessed Gonzalez’s disability prior to the issuance of Dr. Jacobo’s report. See Andres v. Shalala, 53 F.3d 1035, 1041 (9th Cir. 1995) (holding that “clear and convincing reasons” are required to reject a treating physician’s uncontradicted opinion). Even if we were to somehow treat the Jacobo opinion as contradicted, the ALJ did not provide the “specific and legitimate reasons . . . supported by substantial evidence in the record” required to disregard a contradicted report. Edlund v. Massanari, 253 F.3d 1152, 1157 (9th Cir. 2001).

Nor can Dr. Schweller’s opinion constitute a “specific and legitimate reason” for disregarding Dr. Jacobo’s opinion because it, too, was based on an examination conducted prior to Dr. Jacobo’s opinion. Further, while the ALJ mentions Dr.

Schweller's report in passing (along with the other medical reports), he does not cite Dr. Schweller's report as evidence in support of his decision to adopt Dr. Lizarraras's opinion.

Further, the ALJ's stated reasons for rejecting Gonzalez's testimony as to the severity of her pain are a pair of minor, non-material inconsistencies relating to her education and vehicle ownership. The ALJ's general belief of exaggeration finds no support in the record and is contradicted by the testimony of Gonzalez's daughter.

Finally, the ALJ applied the Medical-Vocational Guidelines (the "Grid"), which can only be applied if the claimant experiences no significant non-exertional limitations. Polny v. Bowen, 864 F.2d 661, 663 (9th Cir. 1988). If, after properly considering Dr. Jacobo's report and Gonzalez's testimony on remand, Gonzalez's "nonexertional limitations are in themselves enough to limit h[er] range of work," the Grid would not be applicable and "the testimony of a vocational expert [would be] required to identify specific jobs within the claimant's abilities." Id. at 663-64.

The judgment of the district court is reversed and the matter remanded to the district court for it to remand to the Commissioner for proceedings consistent with this disposition, including a redetermination of Gonzalez's entitlement to benefits.

REVERSED and REMANDED.